

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Emergency Regulation

Title of Regulation: **12VAC30-135. Demonstration Waiver Services (amending 12VAC30-135-400, 12VAC30-135-420, 12VAC30-135-430).**

Statutory Authority: § 32.1-325 of the Code of Virginia; § 1115 of the Social Security Act.

Effective Dates: October 28, 2016, through December 29, 2016.

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Preamble:

Section 2.2-4011 A of the Code of Virginia states that agencies may adopt regulations in emergency situations after the agency submits a written request stating the nature of the emergency and the Governor approves the emergency action. The Department of Medical Assistance Services (DMAS) submitted a request to the Governor stating in writing the nature of this emergency, and on October 28, 2016, the Governor specifically authorized this action to amend the previous emergency action for the Governor's Access Plan (GAP) Demonstration Waiver for Individuals with Serious Mental Illness, which was published in [31:10 VA.R. 864 January 12, 2015](#), and [31:23 VA.R. 2128 July 13, 2015](#), to be promulgated as an emergency action.

Item 306 XXX 1 b of Chapter 780 of the 2016 Acts of Assembly directed DMAS to amend the GAP Demonstration Waiver by increasing the household income level to 80% of the federal poverty level. The amendments conform the emergency regulation to this requirement.

Part III

Governor's Access Plan Demonstration Waiver for Individuals with Serious Mental Illness

12VAC30-135-400. Establishment of program.

A. The Commonwealth through the Department of Medical Assistance Services (DMAS), the single state Medicaid agency, establishes a § 1115 demonstration waiver, the Virginia Governor's Access Plan (GAP) for the Seriously Mentally Ill (SMI). With federal approval, Virginia will offer a limited yet targeted benefit package of services that builds on a successful model of using existing partnerships to provide and integrate basic medical and behavioral health care services for individuals who have a serious mental illness (SMI) and have incomes less than 60% or equal to 80% of the federal poverty limit (plus a 5.0% household income disregard) level using the modified adjusted gross income eligibility methodology.

B. Enabling persons with SMI to access both behavioral health and primary health services will enhance the treatment they can receive, allow their care to be coordinated among providers, and potentially significantly decrease the severity of their condition. The three goals of this program are:

1. Improve access to health care for a segment of the uninsured population in Virginia that has significant behavioral and medical needs;
2. Improve health and behavioral health outcomes of demonstration participants; and

3. Serve as a bridge to closing the coverage gap for uninsured Virginians.

12VAC30-135-420. Administration; authority; waived provisions.

A. DMAS shall cover a targeted set of services as set forth in 12VAC30-135-450 for currently uninsured individuals who have diagnoses of serious mental illnesses with incomes ~~below 60%~~ less than or equal to 80% of the federal poverty line level (FPL) (plus a 5.0% household income disregard) using the modified adjusted gross income (MAGI) eligibility methodology. All individuals enrolled in this Medicaid demonstration project with incomes between 61% and 100% of the FPL as of May 15, 2015, who continue to meet other program eligibility rules shall maintain enrollment in the demonstration until their next eligibility renewal period or July 1, 2016, whichever comes first.

B. Consistent with § 1115 of the Social Security Act (42 USC § 1315), the department covers certain limited services specified in 12VAC30-135-450 for certain targeted individuals specified in 12VAC30-135-430.

C. The Secretary of the U.S. Department of Health and Human Resources has waived compliance for the department with the following for the purpose of this demonstration waiver program:

1. Consistent with § 1902(a)(10)(B) of the Act, the amount, duration, and scope of services covered in the State Plan for Medical Assistance shall be waived. The department shall cover a specified set of benefits for the individuals who are determined to be eligible for this program.
2. Consistent with § 1902(a)(23)(A) of the Act, the participating individuals' freedom of choice of providers of services shall be waived for peer supports and GAP case management.
3. Consistent with § 1902(a)(23) of the Act, the services shall be provided by a different delivery system than otherwise used for full State Plan services for peer supports and GAP case management.
4. Consistent with § 1902(a)(4) of the Act, insofar as it incorporates 42 CFR 431.53 permitting the Commonwealth to waive providing nonemergency transportation to and from participating providers for eligible, participating individuals.
5. Consistent with § 1902(a)(35) of the Act, permitting the Commonwealth to waiver offering eligible, participating individuals retroactive eligibility for this demonstration program.

D. This demonstration program shall operate statewide.

E. This demonstration program shall operate for at least two years beginning January 2015 through January 2017 or until the Commonwealth implements an alternative plan to provide health care coverage to all individuals having incomes ~~up to 60%~~ less than or equal to 80% of the FPL using the MAGI eligibility methodology.

F. This demonstration program shall not affect or modify, or both, components of the Commonwealth's existing medical assistance or children's health insurance programs.

12VAC30-135-430. Individual eligibility; limitations.

A. The GAP eligibility determination process shall have two parts: (i) a determination of whether or not the individual meets the GAP SMI criteria and (ii) a determination of whether or not the individual meets the GAP financial and nonfinancial eligibility criteria.

1. A person may apply through Cover Virginia for GAP by phone or through a provider-assisted web portal.

2. If an individual is found not to meet GAP eligibility rules, either the GAP financial/nonfinancial criteria or the GAP SMI criteria, then the individual shall be sent an adverse determination letter with appeal rights. Such individuals shall be assessed and referred for eligibility through Medicaid, FAMIS MOMS, and the federal marketplace for private health insurance.

B. Individuals shall have a screening conducted by a DMAS-approved GAP screening entity for the determination of eligibility for GAP SMI services.

C. In order to be eligible for this program, individuals shall be assessed to determine whether their diagnosed condition is a serious mental illness. The serious mental illness shall be diagnosed according to criteria defined in the DSM-IV-TR or DSM-5. LMHPs, including LMHP-supervisees, LMHP-residents, and LMHP-residents in psychology, shall conduct the clinical screening required to determine the individual's diagnosis if one has not already been made. At least one of the following diagnoses shall be documented for the individual to be approved for GAP SMI services:

1. Schizophrenia spectrum disorders and other psychotic disorders with the exception of substance/medication induced psychotic disorders;
2. Major depressive disorder;
3. Bipolar and related disorders with the exception of cyclothymic disorder;
4. Post-traumatic stress disorder; or
5. Obsessive compulsive disorder, panic disorder, agoraphobia, anorexia nervosa, or bulimia nervosa.

D. In order to be eligible for this program, individuals shall meet at least one of the following criteria to reflect the duration of illness:

1. The individual is expected to require treatment and supportive services for the next 12 months;
2. The individual has undergone psychiatric treatment more intensive than outpatient care, such as crisis response services, alternative home care, partial hospitalization, or inpatient hospitalization for a psychiatric condition, more than once in his lifetime; or
3. The individual has experienced an episode of continuous, supportive residential care, other than hospitalization, for a period long enough to have significantly disrupted the normal living situation. A significant disruption of a normal living situation means the individual has been unable to maintain his housing or had difficulty maintaining his housing due to being in a supportive residential facility or program that was not a hospital. This includes group home placement as an adolescent and assisted living facilities but does not include living situations through the Department of Social Services.

E. In order to be eligible for this program, individuals shall demonstrate a significant level of impairment on a continuing or intermittent basis. There shall be evidence of severe and recurrent impairment resulting from mental illness. The impairment shall result in functional limitation in major life activities. Due to the mental illness, the person shall meet at least two of the following:

1. The person is either unemployed or employed in a sheltered setting or a supportive work situation, has markedly limited or reduced employment skills, or has a poor employment history;
2. The person requires public and family financial assistance to remain in his community;
3. The person has difficulty establishing or maintaining a personal social support system;
4. The person requires assistance in basic living skills such as personal hygiene, food preparation, or money management; or
5. The person exhibits inappropriate behavior that often results in intervention by the mental health or judicial system.

F. The individual shall require assistance to consistently access and to utilize needed medical or behavioral, or both, health services and supports due to the mental illness.

G. In addition, the individuals shall:

1. Be adults ages 21 through 64 years of age;
2. Be United States citizens or lawfully residing immigrants;
3. Be residents of the Commonwealth;
4. Be uninsured;
5. Be ineligible for any state or federal full benefits health insurance program including, but not necessarily limited to Medicaid, Children's Health Insurance Program (CHIP/FAMIS), Medicare, or TriCare Federal Military benefits;
6. Have household incomes ~~below 60%~~ less than or equal to 80% of the federal poverty level (FPL) ~~plus a 5.0% household income disregard~~ using the modified adjusted gross income (MAGI) eligibility methodology, which shall be verified via pay stubs or other readily available and reliable electronic sources. All individuals enrolled in this Medicaid demonstration project with incomes between 61% and 100% of the FPL ~~(plus a 5.0% household income disregard)~~ using the MAGI eligibility methodology as of May 15, 2015, who continue to meet other program eligibility rules shall maintain enrollment in the demonstration until their next eligibility renewal period or July 1, 2016, whichever comes first. Pursuant to DMAS federal authority under the § 1115 waiver, should expenditures for the GAP demonstration waiver compromise the program's budget neutrality, DMAS may amend the waiver to maintain budget neutrality by reducing income eligibility levels to below ~~60%~~ 80% of the FPL; and
7. Not be current residents of a long-term care facility, mental health facility, or penal institution.

H. Individuals who are enrolled in this GAP demonstration waiver program who require hospitalization shall not be disenrolled from the GAP demonstration waiver program during their hospitalization.

I. If a GAP-eligible individual secures Medicare or Medicaid/FAMIS MOMS coverage, his GAP program eligibility shall be terminated consistent with the effective date of the Medicare or Medicaid coverage. Individuals who gain other sources of health insurance shall not be disenrolled from the GAP demonstration waiver program during their 12 months of eligibility; however, in such instances, the GAP program shall be the payer of last resort.

J. DMAS or its contractor shall verify income data via existing electronic data sources, such as Virginia Employment Commission and TALX. Citizenship and identity shall be verified through

the monthly file exchange between DMAS and the Social Security Administration. The individual's age, residency, and insurance status shall be verified through self-attestation. Applicants shall be permitted 90 days to resolve any citizenship discrepancies resulting from Social Security Administration matching process, in any of the information provided, and in the DMAS or the contractor verification process findings.

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